

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4370 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GILBERT KAHANJIBHAI CHRISTIAN

Versus

DIRECTOR

Appearance:

MR IS SUPEHIA for Petitioner

MR VM PANCHOLI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/06/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner who was at the relevant time serving as an Assistant Teacher under the District Primary Education Officer, Kheda has challenged the order dated 31-5-1985 passed by the Director of Primary and Adult Education rejecting the petitioner's appeal against the decision of the District Primary Education Officer to give the petitioner selection grade with effect from 1-5-1977 and not with effect from 1-1-1973 as claimed by

the petitioner.

2. As per the Government Resolution dated 13-10-1977, while granting selection grade to teachers in primary schools, the relevant date for assessing performance of the eligible teachers is the date on which the selection committee considers the case of the eligible teachers and not the date from which the selection grade is to be granted. The committee applied the criteria contained in the Government Resolution dated 18-12-1950 (Annexure "F") which laid down that no employee should be promoted unless his record shows that he possesses the necessary positive qualifications for the higher grade, service or post such as personality, professional qualifications, initiative, strength of character and readiness to assume individual responsibility. The said Resolution further provided that no employee who has the positive qualifications referred to hereinabove should be passed over by an employee junior to him unless the later has, in addition, really exceptional ability or qualifications. The resolution also provided that for assessing the merit of the officers on comparative basis for the purpose of the aforesaid principles, the officers' qualities should be taken into consideration over a series of years whenever possible and the judgment should be framed after carefully considering the reports of atleast three different superior officers.

3. When the selection committee met on 9-1-1978, it considered the petitioner's performance for the period upto 31-3-1977. Out of the three years, the remarks for the Academic Years 1974-75 and 1975-76 were average. The grading for 1976-77 was good. The confidential reports of the petitioner indicated that right from the year 1958-59 till the year 1975-76 the performance of the petitioner was assessed to be average. The selection committee, therefore, found that the petitioner cannot be said to be meeting the criteria of fitness as prescribed in clause (a) of the aforesaid Government Resolution. On the same basis, the Director of Primary Education dismissed the petitioner's appeal against the decision of the District Primary Education Officer.

4. The learned counsel for the petitioner has challenged the aforesaid decision of the Competent Authority and that of the appellate authority on the ground that the selection committee applied wrong criteria of merit-cum-seniority though it was required to apply the criteria of only seniority-cum-merit. In support of the said contention, the learned counsel has

relied upon the decision dated 26-4-1982 of this Court in Special Civil Application No. 437 of 1982.

5. Although *prima facie* the aforesaid decision might be seen as supporting the petitioner's case, it is required to be noted that a conjoint reading of clauses (a) and (b) of the aforesaid resolution clearly indicates that the employee must be found to have positive fitness in order to be promoted and once the employee is found to be positively fit, he cannot be superseded by his juniors merely on the ground that the juniors are more meritorious than the senior who is found to be positively fit. Due weight should be attached to seniority and, therefore, the principle of seniority becomes applicable at the stage when the employee is already found to be positively fit for promotion. The learned Single Judge of this Court did not express any view in the aforesaid decision that the employee need not show fitness. In fact, expressing any such view would have run counter to the express language of the resolution. In the context of the controversy which arose in that case, the learned Single Judge found that the authority in that case had applied the principle of merit-cum-seniority by examining the comparative merit of the eligible candidates which was not the correct test to be applied when the criteria for promotion are such as laid down in the Government Resolution dated 18-12-1950 at Annexure "F" to the petition.

6. The aforesaid judgement, however, does not clinch the issue in favour of the petitioner as neither the District Primary Education Officer nor the Director of Primary Education have given any finding that the petitioner was not granted selection grade with effect from 1-1-1973 because his juniors were found to be more meritorious. All that the authorities have done is to apply the criteria contained in the aforesaid Government Resolution dated 18-12-1950 that the employee must show that he possesses the necessary positive qualifications for the higher grade services or post such as personality, professional qualifications, initiative, strength of character and readiness to assume individual responsibility. When the petitioner's performance was assessed to be average for a period of almost two decades from 1958-59 to 1975-76, it cannot be said that at the relevant time the petitioner possessed such positive qualities required by the aforesaid resolution. It is true that the grading in the petitioner's Confidential Report for the year 1976-77 was good. However, as specified in the Government Resolution dated 18-12-1950 (Annexure "F") performance is to be assessed over a

series of years whenever possible and after considering the reports of atleast three different superior officers. Hence, "good" grading merely in the last year before the date of consideration of the petitioner's case could not have tilted the case in favour of the petitioner. It was only when the selection committee met on 24-6-1981 and found that the petitioner's Confidential Reports till that date indicated that the petitioner had shown the positive fitness that the authorities granted the petitioner selection grade with effect from 1-5-1977.

5. In above view of the matter, no fault can be found with the impugned order. The petition, therefore, deserves to be dismissed and is dismissed.

Rule is discharged with no order as to costs.

June 14, 1999 (M.S. Shah, J.)

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